



Legal Update

January 2017

The SJC holds that the police lacked reasonable suspicion to stop the defendant after receiving report that there was shooting nearby because the witness provided only a very general description of the possible suspects and she did not identify any member of the group detained near the scene of the shooting.

Commonwealth v. Meneus, 476 Mass. 231 (2017): Cambridge Police received a report from Debra Santos that a gunshot struck her vehicle as she was driving on Windsor Street in Cambridge. Cambridge police met Santos who told them that after she heard a loud noise that she believed was a gun shot, she saw a group of young, black males running into the courtyard of the Washington Elms housing complex. Santos never indicated that the group was involved in the shooting. However, one of the officers observed a young male stick his head outside of the courtyard and then back inside. The proximity to the entrance of the housing complex and where the shots were heard were “literally right around the corner.”

The officers approached the group of young males and asked if they heard gunshots. The officers had no prior interaction with of the young men and had no information that they were involved in criminal activity. Officers asked if they could conduct a patfrisk. Some of the young men agreed. However, the defendant became argumentative and he began

walking away backwards. One of the officers started pursuing him. The defendant started running away and the police yelled: “Cambridge police, stop.”

Eventually, police caught up to the defendant and discovered a firearm underneath his body. Santos was never asked to identify any of the young men in the group. The defendant was charged and filed a motion to suppress. During the suppression hearing, both officers acknowledge that at the time they encountered the defendant, he was not a suspect in a crime but merely a person of interest.

Conclusion: The SJC vacated the convictions after determining the police lacked reasonable suspicion to stop and ultimately seize the defendant. The two issues the SJC reviewed are listed below:

- 1. When the defendant was seized;**
- 2. Whether at the time of the seizure, the police had reasonable suspicion to believe the defendant committed a crime or was about to commit a crime.**

1st Issue: At what moment was the defendant seized?

The SJC determined that a seizure for constitutional purposes occurred when one of the police officers advanced toward the defendant as he turned to leave the area in an apparent attempt to avoid an imminent patfrisk. The officer’s pursuit of the defendant as he attempted to leave the scene “communicated unequivocally that refusing to submit to the request was not an option.”

2nd Issue: Did police have reasonable suspicion to believe the defendant was involved in criminal activity?

After examining the totality of the circumstances, the SJC held that the police lacked reasonable suspicion to stop the defendant. “The motion judge ruled that police had reasonable suspicion for the seizure based on a combination of factors: (1) the defendant was part of a group of black males matching the description provided to police by the victim; (2) the stop occurred in a ‘high crime’ area; (3) the purpose of the stop was to investigate a report of shots fired, a crime posing an imminent threat to public safety; (4) the defendant and his companions were in close geographical and temporal proximity to the alleged crime at the time of the stop; (5) the defendant fled from the scene; and (6) the officers’ safety justified the patfrisk. The SJC analyzed each factor below and found the police did not have enough to stop the defendant.

For specific guidance on the application of these cases or any law, please consult with your supervisor or your department’s legal advisor or prosecutor.

- a. **Description of the suspects:** Neither the initial dispatch nor Santos provided any information that would suggest the group of young males that included the defendant were involved in the shots fired incident. “Other than the race and age of the group seen running into the housing complex, the police had no usual descriptive information such as distinctive clothing, facial features, hairstyles, skin tone, height, weight or other physical characteristics” that would have linked the young men to the incident. The SJC further found that the “totality of the facts known to the police at the time of the seizure lacked sufficient detail to add flesh to the bare-bones description provided by Santos.

Justice Hines held that “the mere presence of a nondescript group of young black males standing near the scene of a reported shooting did not, standing alone, sufficiently narrow the range of possible suspects to include this group of individuals.”

- b. **High crime area:** The SJC recognized that a high crime area can be a factor that contributes to the police officer’s reasonable suspicion, but cautioned that it considers whether the inferences drawn from the characterization of a high area demonstrate the reasonableness of the intrusion. Here there was no negative inference that could be drawn from the location of the stop and therefore it is not a relevant factor for this case.
- c. **Nature of the crime reported:** “The motion judge considered the report of shots fired as an imminent threat to public safety and, on that basis, concluded that the police were permitted to stop the defendant even without direct information that he had committed the crime under investigation.” The judge relied on *Commonwealth v. Foster*, 48 Mass. App. Ct. 671, 674-675 (2000), where the Appeals Court held that a police officer may pat frisk an individual, even in the absence of reasonable suspicion of criminal activity, if the circumstances present an imminent threat to public safety. The judge also denied the defendant’s motion for reconsideration that was based on the holding in [*Commonwealth v. Narcisse*, 457 Mass. 1, 9 (2010)], that ‘police officers may not escalate a consensual encounter into a protective frisk absent a reasonable suspicion that an individual has committed, is committing, or is about to commit a criminal offense and is armed and dangerous.’” The SJC determined this was an error.

The SJC noted that the rationale underlying *Foster*, derived principally from *Commonwealth v. Fraser*, 410 Mass. 541 (1991), was undercut substantially in *Narcisse*, where the Court specifically ‘disavowed any suggestion in *Fraser* that

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we were establishing a new or lesser standard in our stop and frisk jurisprudence. *Narcisse*, 457 Mass. at 9. The motion judge erred in disregarding this limitation of *Fraser*, which in turn called into question the continued vitality of *Foster*. The second issue the SJC raised on this factor was that the “gravity of the crime and the present danger of the circumstances” may be considered in the reasonable suspicion calculus. However there is no separate public safety exception based on this factor.

- d. **Geographical and temporal proximity to the crime:** While geographical and temporal proximity is relevant in the reasonable suspicion calculus, it adds little value in this case. Santos never identified the defendant or anyone in the group.
- e. **Flight from the scene:** The defendant’s flight from the scene as the officers began pat frisking the other members of the group according to the SJC’s analysis did not create more suspicion that the defendant might be armed or involved in illicit activity. Here the issue of flight as a factor in reasonable suspicion is focused on defendant’s action in backing away to avoid a patfrisk to which he did not consent. In the absence of constitutional justification for a threshold inquiry, “our law guards a person’s freedom to speak or not to speak to a police officer. A person also may choose to walk away [or run away], avoiding altogether any contact with police.” Because the defendant did not consent to a patfrisk and subsequently backed away from the scene does not lead police to infer that the defendant was involved in criminal activity.
- f. **Officer Safety:** The SJC found that there was not an officer safety issue here because at the time the officers encounter the young men including the defendant, they had no information that the defendant had committed a crime.

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